



भारत का राजपत्र

The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 330]

नई दिल्ली, सोमवार, जून 7, 1993/ज्येष्ठ 17, 1915

No. 330]

NEW DELHI, MONDAY, JUNE 7, 1993/JAYAISTHA 17. 1915

इस भाग में भिन्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकलन के रूप में
रहा था।

**Separate Paging is given to this Part in order that it may be filed as a
separate compilation**

गृह मंत्रालय

श्रद्धिसूचना

नई दिल्ली, 7 जून, 1993

का. आ. 360(अ) :—केंद्रीय सरकार ने विधिखिंड क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस्तामिक भेवक संघ (जिसे इसमें इसके पश्चात् आई.एम.एस. कहा गया है) को भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का. आ. 899(अ) तारीख 10 दिसम्बर, 1992 द्वारा विधि-विशद संग्रह के रूप में घोषित किया था;

और केंद्रीय सरकार ने उक्त अधिनियम की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की अधिसूचना संख्या का. आ. 925(अ) तारीख 24 दिसम्बर, 1992 द्वारा विधि-विशद क्रियाकलाप (निवारण) न्यायाधिकरण का गठन किया

था, जिसमें विली उच्च न्यायालय के न्यायाधीश न्यायमूर्ति श्री पी. एन. नाग थे।

और केंद्रीय सरकार ने पूर्वोक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिसूचना को 8 जनवरी, 1993 को इस बात के न्यायनिर्णयन के लिए उच्च न्यायाधिकरण को निर्दिष्ट किया था कि वह उस संग्रह को विधि-विशद घोषित करने के लिए पर्याप्त कारण था अथवा नहीं;

और उक्त न्यायाधिकरण ने उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधिसूचना संख्या का. आ. 899(अ) तारीख 10 दिसम्बर, 1992 में को गई घोषणा को पुष्ट करने हए तारीख 3 जून, 1993 को एक आदेश दिया था;

अतः श्री, कानूनीय सरकार, उक्त प्रधिनियम की धारा 4 की उपधारा (4) के मतुसरण में उक्त अदिश प्रकारित करती है।

[मं II/12034/74/93 आई एस (डी-V)]
टी.एन. श्रीवास्तव, संपूर्ण सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 7th June, 1993

S.O. 360(E).—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), declared the Islamic Sewak Sangh (hereinafter referred to as ISS) as unlawful association vide notification of the Government of India in the Ministry of Home Affairs No. S.O. 899(E) dated 10th December, 1992;

And, whereas, the Central Government in exercise of the powers, conferred by sub-section (1) of section 5 of the said Act vide notification of the Government of India in the Ministry of Home Affairs No. S.O. 925(E) dated the 24th December, 1992, constituted the Unlawful Activities (Prevention) Tribunal, consisting of Justice Shri P. N. Nag, Judge of the Delhi High Court;

And, whereas, the Central Government in exercise of the powers, conferred by sub-section (1) of section 4 of the aforesaid Act, referred the said notification to the said Tribunal on the 8th January, 1993 for the purpose of adjudication whether or not there was sufficient cause for declaring the said association as unlawful;

And, whereas, the said Tribunal, in exercise of the powers conferred by sub-section (3) of section 4 of the said Act made an order on the 3rd June, 1993 confirming the declaration made in the notification No. S.O. 899(E) dated 10th December, 1992;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the said order, namely :—

ORDER

BEFORE THE UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL

Constituted vide Notification No. S.O. 925(E) issued by the Ministry of Home Affairs, Government of India, New Delhi dated 24th December, 1992 in exercise of powers conferred by Sub-section (1) of Section 5 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

The question that arises for consideration in this reference is whether the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) was justified in declaring the Islamic Sewak Sangh as an “unlawful association” on the grounds specified in the Notification No. S.O. 899(F) dated 10th December, 1992 and that sufficient cause

has been shown by the Central Government for declaring the Islamic Sewak Sangh as an unlawful association and confirmation of the declaration so made.

In exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the “Act”), vide Ministry of Home Affairs Notification No. S.O. 899(E) dated 10th December, 1992 published in the Gazette of India, Extraordinary Part II, the Central Government has declared the Islamic Sewak Sangh (hereinafter referred to as the “ISS” to be an unlawful association and directed in exercise of the powers conferred by the proviso to sub-section (3) of that section that the Notification shall, subject to any order that may be made under Section 4 of the Act, have effect from the date of its publication in the Official Gazette. The objects and reasons for declaring ISS as unlawful are stated in the Notification itself, which may be reproduced below for the sake of convenience :

“Whereas Shri I.C.S. Abdul Nazar Madani, Chairman of the Islamic Sewak Sangh (hereinafter referred to as ISS) had been giving inflammatory speeches with a view to promoting, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different communities;

And whereas Shri I.C.S. Abdul Nazar Madani, in a public meeting at Poonthura, District Trivandrum on the 30th June, 1992, has stated that thousands of Muslims were killed and tortured in Kashmir and authorities were not taking effective steps and Muslim women were being raped by Hindus with the support of authorities;

And whereas Shri I.C.S. Abdul Nazar Madani, in a recorded speech for public circulation, has stated that a Muslim cannot live as a Muslim in this country and Muslim brothers should be prepared to get organised as also question the right of the people to hoist national flag in Kashmir;

And whereas the following criminal cases have been registered against Shri I.C.S. Abdul Nazar Madani u/s 153 A and 153 B of the Indian Penal Code (45 of 1860) :

- (a) Karunagapally PS (District Kollam) Case No. 109/92 dated 20th March, 1992 u/s 153 A;
- (b) Kundata PS (District Kollam) Case No. 117/92 dated 28th March, 1992 u/s 153 A.
- (c) Kasba PS (District Calicut) Case No. 103/92 dated 21st May 1992 u/s 153 B;

In exercise of the powers conferred by sub-section (1) of Section 5 of the Act, the Central Government being of opinion that it is necessary so to do, vide Notification No. S.O. 925(E) dated 24th December, 1992 constituted the “Unlawful Activities (Prevention) Tribunal” (hereinafter referred to as the “Tribunal”) consisting of Shri Justice P.N. Nag Judge of the Delhi High Court.

Vide letter No. II/14034/2/92-JS(DV) dated 8th January, 1993 addressed to the Registrar of the Tribunal, Joint Secretary to the Government of India enclosed a copy of the Government of India, Ministry of Home Affairs Notification No. SO 899(E) dated 10th December, 1992 published in the Gazette of India Extraordinary on the 10th December, 1992 declaring the ISS as an 'unlawful association' under sub-section (4) of the Act for placing it before the Tribunal for the purpose of adjudicating in accordance with Section 4 of the Act. A resume regarding the aims, objectives and activities of the said organisation as required under Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 (hereinafter referred to as the "Rules") was also enclosed with the aforesaid letter of 8th January, 1993.

The Tribunal heard the matter on 12th January, 1993 and ordered for issuance of notice to show cause to Islamic Sewak Sangh and its office bearers mentioned in the order why the Association should not be declared as unlawful.

The ISS and its office bearers have been duly served and are represented by Mr. Shakeel Ahmad, Advocate.

Reply, rejoinder, sur rejoinder have been filed by the parties.

After hearing learned counsel for the parties vide order 26th March, 1993, I considered it appropriate that the evidence should be produced by the parties by way of affidavit and consequently the Union of India and ISS have filed affidavits by way of evidence.

An application was moved on behalf of the Union of India offering their witnesses for cross-examination by the ISS if so desired to which counsel for the ISS had no objection and two witnesses of the Union of India, namely, Mr. N. C. Padhi (GW 1) and Mr T. N. Srivastava (GW 2) were cross-examined by counsel for the ISS at Delhi. So far as other witnesses of the Union of India and ISS were concerned, they belonged to Kerala State and consequently at the request of the counsel for the ISS, the Tribunal held its sitting at Ernakulam (Kerala) on 21st, 22nd, 25th and 26th May, 1993 and all the witnesses of the parties were cross-examined there.

In order to examine and adjudicate the reference, it may be necessary to refer to the statement of objects and reasons and also certain other relevant provisions of the Act :

STATEMENT OF OBJECTS AND REASONS

"Pursuant to the acceptance by Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixth Amendment) Act, 1963, was enacted empowering Parliament to impose, by law, reasonable restrictions in the interest of the sovereignty and integrity of India, on the —

- (i) freedom of speech and expression;
- (ii) right to assemble peaceably and without arms; and
- (iii) right to form associations or unions."

"It was an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith."

Relevant provisions of the Act reads as under.

"2. Definitions.—In this Act, unless the context otherwise requires, —

- (a) "association" means any combination or body of individuals;
- (b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such party.
- (c)
- (d) "secession of a part of the territory of India from the Union" includes the ascension of any claim to determine whether such part will remain a part of the territory of India;
- (e)
- (f) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), —
 - (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;
 - (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;
- (g) "unlawful association" means any association —
 - (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity;
 - (ii) which has for its object any activity which is punishable under section 153-A or section 153-B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity :

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu & Kashmir."

"3. Declaration of an association as unlawful.—
(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary :

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette :

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette."

"(4) Reference to Tribunal.—(1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the

tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful."

In order to determine and adjudicate whether or not there is sufficient cause for declaring the ISS an unlawful association, it will be necessary to examine what unlawful association means and whether there was enough and adequate material before the Central Government as was necessary to answer the purpose intended.

Unlawful association, as already referred to, has been defined in Clause (g) of Section 2 of the Act, which means an association means any association (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity or which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity. Section 153-A of the Indian Penal Code deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony. Section 153-B deals with making of imputations, assertions prejudicial to national integration. The unlawful activity as defined in Clause (f) of Section 2 in relation to an individual or association is comprehensive enough to include all activities of an individual or an association which are intended, or support any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such

cession or secession or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India. Any association or individual will be unlawful if its activities are aimed at and directed with the object of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and/or making of imputations, assertions prejudicial to national integration and which had the result and effect of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and making of imputations, assertions prejudicial to national integration, threatening the sovereignty and territorial integrity of India.

The Central Government, as already referred to has made the aforementioned declaration after having examined the material in their possession. The question that arises for consideration before the Tribunal is whether the opinion which has been formed by the Central Government that the ISS is an unlawful association is justified in the facts and circumstances of the case and whether there is sufficient and adequate material as may be necessary to answer the purpose intended on the basis of which such an association can be declared unlawful. The purpose and object intended and sought to be achieved are to preserve sovereignty and territorial integrity of India and to curtail any unlawful activity which can result and can have effect of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony and/or making of imputations, assertions prejudicial to national integration.

The preamble of Constitution of India shows that the People of India have constituted into a sovereign democratic republic. According to Article 1 of the Constitution, India shall be union of States. No state has right to secession from the Union.

The Unlawful Activities (Prevention) Act, 1967 (37 of 1967) is intended to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.

The Central Government has placed before the Tribunal evidence in the form of affidavits supported by documents in order to demonstrate that there was enough and adequate material before the Central Government for the formation of its opinion for declaring the ISS as unlawful in the facts and circumstances.

The facts, in substance, as set out in the Resume filed on behalf of the Union of India, its reply filed on behalf of the Islamic Sewak Sangh (for short 'ISS'), rejoinder and sur-rejoinder thereto are that the ISS was formed on 1-1-1991 and its activities are mainly concentrated in the State of Kerala. Its aims and objects are provided in para 5 of the Bye-Laws annexed as Annexure A to the Resume, according to which, this organisation has been formed to face effectively the challenges posed by fascist, communal forces against Muslims. Dalit backward, minority sections of people. According to the Bye-Laws, ISS has to built up cultural and patriotic citizens or

basis of Islam and its membership has been left open only to those citizens who have completed 18 times and other religious rites and have participated years of age and who observe strictly the Namaz of without fail in the disciplinary training programme as instructed by the Organisation and should obey any Islamic instructions given by the Chairman of the High Power Committee and also should be prepared to volunteer themselves to become martyr for the sake of justice and truth. According to the Constitution and Bye-Laws of ISS revolve around the central figure, i.e., the Chairman of the High Power Committee of ISS and who is the Supreme Authority of the organisation. The organisational structure of ISS consists of a Chairman, State Councils, District Councils and Area Councils and units. This organisation works both openly and secretly.

Mr. Abdul Nazar Madani who is the Chairman of High Power Committee of ISS has been making inflammatory speeches causing and which are likely to cause disharmony and feeling of enmity and hatred and ill-will between Muslims and followers of other religions. He has been making assertions and imputations prejudicial to maintenance of harmony between different religious groups and communities and which are likely to disturb the public tranquility and as such has committed offences punishable under Sections 153-A and 153-B of the Indian Penal Code (for short IPC). Mr. Madani had been indulging in unlawful activities and unlawful association within the meaning of Unlawful Activities (Prevention) Act, 1967.

On 17-11-1991 Mr. Madani had made a highly provocative speech at Trivandrum asking the volunteers of "ISS" to be ready to sacrifice their lives for the protection of Babri Masjid. Again on 12-1-1992 at Trivandrum in his speech accused the V.H.P., R.S.S., B.J.P. leaders of consciously sowing the seeds of communal divide. He alleged that V.H.P. and Bajrang Dal had started a new slogan "Musalman go to Pakistan". He incited the Muslims by saying that Muslims in Kashmir were being harassed and the Muslims would be forced to retaliate if the step-motherly treatment meted off them was not ended. He stated that 10,000 strong Muslim volunteer force was being formed to proceed to Ayodhya. On 2-2-1992 in a Convention in Perumbavoor, Mr. Madani condemned the Ekta Yatra programme of BJP and made highly provocative speeches against Hindus. On 25-2-1992, in a closed door meeting of ISS held at Sasthamkotta in Quilon District, it was decided to impart training to ISS volunteers in the use of lathi and daggers and to utilise the services of ex-servicemen for the same. On 18-3-1992 in a public meeting held at Eriyad. Mr. Madani made a highly inflammatory speech that thousands of Muslim girls were being bayoneted in the abdomen by the military in Kashmir and that ISS was prepared to react against all this and he exhorted the members present there to avenge every drop of Muslim blood with a litre of blood. He further stated that so far they had faced knives but hereafter they will retaliate with bullets. The Muslims should be prepared to sacrifice their lives to protect the dignity of the community. In the first week of April, 1992 ISS had been propagating that there was threat to various mosques

in the country. Referring to ascertain by BJP and RSS that there were more than 3003 disputed mosques. ISS cadres were made to believe that these mosques would be demolished by the RSS and BJP. They were further made to believe that Muslims in India were in great danger. The ISS had been giving physical training to volunteers in various mosques. In the public meetings held on 16/17-5-1992 at Kondotty and Maitancherri, Mr. Madani had again made provocative speeches alleging that Kashmiris were being butchered and that the army and police had unleashed a reign of terror against ISS. He said that the hands raised to attack the Muslims would be chopped off. He alleged that 25000 Muslims were killed by security forces in Kashmir. On 10-6-1992 Mr. Madani had made a press statement alleging that in Rajasthan and various other parts of the country Muslims and Harijans and Backwards were being subjected to atrocities at the hands of caste Hindus. On 28-6-1992 at a meeting of ISS at Kottayam, Mr. Madani again made similar allegations that Muslims in the country were being discriminated and were subjected to brutal atrocities and the police had been let loose to physically assault the activists of ISS. On 30-6-1992 at Poonchura Mr. Madani in a provocative manner alleged that about 25000 Muslims were murdered in Kashmir during the last one and a half years, 6000 girls were raped by the police and Army and small children were bayoneted in cold blood. He further added that thousands of Muslims were butchered in Assam and other places.

Not only that, Mr. Madani had recorded a speech which was circulated a few days before 24-4-1992. In that recorded speech he has made similar allegations of atrocities etc. against Muslims and said that there was no Government, judiciary, protection of laws and Muslims had lost their honour.

Mr. Madani had also made several undated recorded speeches. Two of the said speeches have been annexed as Annexures M and N to the Resume. These speeches clearly show that he is promoting enmity between two communities—Muslims and Hindus—and is doing acts which are prejudicial to the maintenance of harmony between different religious groups and public tranquility.

On 23-11-1991 at Vavakkavu Mr. Madani made a speech promoting and intending to promote disharmony and prejudice between Hindus and Muslims. By his speech he intended to arouse the feelings of the members of Muslim community against the Hindus and thereby promoted and attempted to promote prejudice, hatred, ill will and disharmony between Muslims on the one hand and the Hindus and other religious on the other. On the basis of the said speech, FIR No. 109/92 had been registered with Karungappally Police Station under Section 153-A IPC. In this speech, he claimed that Babar was not a foreigner but came from Afghanistan, the birth place of Gandhari.

On 27-12-1991, at a meeting held under the auspices of ISS at Chandanathoppe Junction, Mr. Madani incited the Muslims for communal riots against Hindus, promoting enmity and hatred between two classes. He exhorted the group of about 1500 people that life and property of Indian Muslims was in danger

and fasc'st were bent upon killing Muslims. In fact, the substance of that speech was that the Muslims should rise against the alleged Muslim harassment under ISS flag and should sacrifice their lives in the honour of Muslims. FIR No. 117/92 under Section 153-A was registered against him at Kundara Police Station.

In a meeting at Kasba on 2-5-1992 Mr. Madani had stated that if Uma Bharti, K. G. Marar, Lal Kishan Advani spoke, wanted to make a speech, they were allowed to do so by the authorities whereas he was being stopped by the authorities to deliver a speech. There also Mr. Madani used highly inflammatory speech which was intended to arouse hatred, prejudice, enmity between Hindus and Muslims and was highly prejudicial to the public tranquility. On the basis of this speech a case under Section 153-A was registered at Kasba Police Station vide FIR 103/92 dated 21-5-1992.

In spite of such nefarious activities of Mr. Madani and ISS on the basis of which even cases under Sections 153-A and 153-B IPC were registered against them, no action was taken by the Government to declare ISS as an unlawful association till December, 1992. In the wake of communal riots following the demolition of RJB-BM structure in Ayodhya on 6-12-1992, the Government was forced to take a fresh look at its policy towards such organisations and it formed an opinion allowing organisations like ISS to function in the prevailing situation would have meant aggravation of the already surcharged communal atmosphere and, therefore, the impugned notification declaring the ISS to be an unlawful association was issued.

Various speeches delivered by Mr. Madani have been annexed along with the Resume filed before the Tribunal.

ISS in its written statement has denied all the allegations raised by the Union of India against ISS and, in substance, it has stated that the ISS is not indulging in any unlawful activity, as alleged, and nor Abdul Nazar Madani, Chairman of ISS, has given inflammatory speeches, as alleged, with a view to promote on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different communities. It has further been stated that the members of ISS believe in unity in mankind and universal brotherhood and has only promoted harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and other sectional diversities. All the citizens of India have fundamental right under Article 25 of the Constitution of India to freedom of conscience, the right freely to profess, practice and propagate religion. The leaders of ISS including Abdul Nazar Madani have only made religious speeches to propagate their religion and voice the grievances and backwardness of Muslims and necessity for organisation. It has further been stated that ISS had utmost faith in the unity, sovereignty and integrity of India and in public freedom of conscience, and right of minority and want to protect and promote them. ISS had no office outside Kerala. ISS was however dissolved on 10-12-1992 itself when the information regarding notification declaring ISS as an unlawful

association was received through media since under Section 10 of the Act even continuance of the membership in the unlawful association is an offence.

In substance, ISS has denied all the grounds relied upon by the Union of India in support of the impugned notification and, it has, therefore, been prayed by the ISS that the declaration so made by the Government requires to be revoked, more particularly when ISS itself stands dissolved on 10-12-1992.

In support of the impugned Notification issued by the Government of India. Mr. T. N. Srivastava and Mr. N. C. Padhi have filed their affidavits dated 19-4-1993 by way of evidence on behalf of the Union of India.

In his affidavit by way of evidence, Mr. T. N. Srivastava, Joint Secretary to the Government of India, Ministry of Home Affairs, New Delhi, has clearly stated that the impugned notification dated 10-12-1992 has been issued by the Government of India after due consideration of the relevant and material facts available in the records of the Government of India. The resume of the facts and material in support of the impugned notification, Ext. P-25, clearly demonstrates that the ISS has been indulging in unlawful activities. According to the affidavit by way of evidence, reports Annexures B to L to the Resume have been read and scrutinised in the discharge of his official duties and in usual course of business. These reports are illustrative of the activities of ISS. These reports have been exhibited as Exts. P-26 to P-36. English translation of Constitution of I.S.S. is Ex. 37 (Annexure A to the resume).

Annexure A to the Resume is the Bye-Laws of ISS (Ex. 37) which clearly states that the ISS has been set up to effectively face the challenges posed by fascist communal forces against Muslims, Dalits, backwards and minority sections of the people and its membership is thrown upon only to Muslims and who observe strictly the Namaz of 5 times and other religious rites. In substance, the members have to obey any Islamic instructions given by the High Power Committee Chairman and also to volunteer themselves to become martyr for the sake of justice and truth. In fact the various clauses of bye laws which deals with the formation and constitution of ISS, if read together, clearly reveals the spirit of this Organisation that it is the fundamental organisation of muslims as the membership is open to muslims only and who observe Namaz of 5 times and obey the Islamic instruction, of the High Power Committee Chairman. Its aim is also to face effectively the challenges posed by fascist communal forces against muslims, dalit, backward, minority sections of people, although primarily it has been formed to safeguards the interest of the Muslims.

Annexure B to the Resume, Ext. 26, is an extract of the speech of Mr. Madani delivered on 17-11-1991 at Trivandrum which is a highly provocative speech Mr. Madani has urged the volunteers of the ISS to be ready, even to sacrifice their lives for the protection of Babri Masjid and asked them to take an oath that they would conduct 'Ayodhya March' even if they were to give their blood for it and declared that no

force would be able to prevent them from the Ayodhya March scheduled to begin in the first quarter of 1992.

Annexure C to the Resume, Ext. P-27, is an extract of speech of Mr. Madani delivered on 12-1-1992 at Trivandrum wherein he has condemned the Ekta Yatra of Dr. M. M. Joshi and alleged that the Central Government had not banned the Yatra in spite of repeated appeals from various sections of people. He accused the VIJP, RSS, BJP leaders of consciously sowing the seeds of communal divide. He further alleged that the muslims in Kashmir were being brutally harassed by the army and paramilitary forces, and the move of BJP to take 40 lakhs saffron volunteers to Kashmir with the Ekta Yatra would only aggravate the situation there. He stated that the muslims would not tolerate any damage to the Babri Masjid structure and added that a 10000 strong muslim volunteers force was being formed to proceed to Ayodhya to protect the Babri Masjid.

Annexure D to the Resume, Ext. P-28, is an extract of speech delivered by Mr. Madani on 2-2-1992 in a Convention held at Perumbavoor. In that speech Mr. Madani, referring to Ekta Yatra, has warned that the muslims also could march in thousand from Ayodhya for liberating Babri Masjid. He further warned that the muslims in India will have to decide whether the institutions/establishments of Israel should exist in India.

Annexure E to the Resume, Ext. P-29, is an extract of the closed door meeting of the ISS held at Sasthamkota on 25-2-1992. That meeting expressed much concern over the significant growth of RSS in the country and possession of sophisticated arms by it and muslims who were feeling insecure in the BJP ruled states and the UP temple at Ayodhya, which created more insecurity among them. In that meeting the ISS leaders expressed the fear that a communal tension would soon arise in the country and the muslims would be adversely affected. In that meeting the ISS leaders decided to impart physical training to its volunteer (at present lathi and dagger training) to face the threat from ISS and for this purpose the services of ex servicemen would be utilised.

Annexure F to the Resume, Ext. P-30, is an extract of the speech delivered on 18-3-1992 at Eriyad by Mr. Madani. In that meeting in his highly provocative speech he alleged that thousands of muslim youths were being tortured in Kashmir and Muslim girls were being bayoneted in the abdomen by the military and infants were thrown outside their homes and trampled. According to him thousands of muslim women have been raped. He further said that they would shower them with bullets and they had to sacrifice for the society to achieve the heaven of Allah.

Annexure G to the Resume, Ext. P-31, is an extract of speech of Mr. Madani propagating threat to mosques due to the anti-secular and anti-muslim attitude of RSS, BJP and other communal organisations. ISS cadres were made to believe that the mosques would be demolished on the demands of RSS and BJP. They were also made to believe that muslims in India are in great danger because of this and these propaganda methods were readily accepted by the youths and ISS had been successful in organising the youths.

Annexure H to the Resume, Ext. P-32 is an extract of a speech of Mr. Madani delivered on 16/17-5-1992 at Kondotty and Mattancherry. He repeated the same thing that more than 6000 Kashmiris were butchered by Indian security forces in Kashmir during the last one and a half year and the security forces attacked 300 pregnant muslim women with bayonets. He has stated that the attacked on muslims by fascists are on the increase and the ISS was formed to protect the muslims from attacks of such fascists. At Mattancherry (on 17-5-1992) he warned that if the Kerala Government tried to put ISS workers in jails of lock ups, the whole muslims of Kerala had to be jailed. Explaining the alleged atrocities against muslims in Kashmir Mr. Madani alleged that 25000 muslims were killed by security forces in Kashmir.

Annexure I to the Resume, Ext. P-33, is an extract of the press statement dated 10-6-1992 of Mr. Madani. In that press statement Mr. Madani has alleged that in Rajasthan and in various other parts of the country, muslims, harijans and backward sections of the people have been subjected to atrocities at the hands of Caste Hindus and the Central and State Governments had not taken any action against such atrocities.

Annexure J to the Resume, Ext. P-34, is an extract of the speech made by Mr. Madani on 28-6-1992 at Kottayam where he has said that the muslims in the country were being discriminated and they were subjected to brutal atrocities.

Annexure K to the Resume, Ext. P-35, is an extract of the speech delivered by Mr. Madani at Poonthura on 30-6-1992 in which he spoke about Bilal who sacrificed his life for the upliftment of the negroes in South Africa and exhorted the muslims to follow the path shown by Bilal. He again repeated about the murders of muslims in Kashmir by the Indian army and about raping of the muslim girls by the police and army.

Annexure L to the Resume, Ext. P-36, is a gist of the recorded speech of Mr. Madani with special reference to the provocative utterances. In that recorded speech he has insisted and harped on the same theme of his usual speeches that muslims are being butchered, muslims girls raped etc.

English translation of the Constitution (Annexure A to the Resume) of ISS is Ext. 37.

According to Mr. Srivastava, the abovementioned speeches, Exts. 26 to 36, are highly inflammatory and intended to arouse the feelings of hatred and enmity. In addition to these reports, information about the cases received under Sections 153 A and 153 B of the IPC against persons belonging to ISS were also received from time to time and copies of the gist of FIRs have been exhibited as Exts. P-13 (Annexure O to the Resume), P-18 (Annexure P to the Resume) and P-20 (Annexure Q to the Resume). Ext. P-5 (Annexure M to the Resume) and Ext. P-6 (Annexure N to the Resume) are the English versions of the speeches of Mr. Madani which were in circulation in the form of audio cassettes. These speeches were highly inflammatory

and detrimental to communal harmony and peace and spread hatred between members of the Hindu and Muslim religious communities. Audio cassette of these speeches are Ext. P-1 and Ext. P2 and the Malayalam transcription of these speeches are Ext P-3 and Ext P-4.

The evidence of Mr. T. N. Srivastava is corroborated by the affidavit evidence of Mr. N. C. Padhi, Joint Director, Intelligence Bureau, Ministry of Home Affairs, New Delhi in which the same documents have been relied upon by him as by Mr. Srivastava and it has been stated that in the course of official duties he collected and disseminated information regarding ISS. The reports, Exts. 26–36 were received in the office of I. B. in normal course of business through authenticated, reliable and secured sources.

Both these witnesses have stood the test and scrutiny of cross examination by Mr. Shakeel Ahmed, learned counsel for the I. S. S. and further strengthened the case of the Union of India.

Mr. Srivastava in his cross examination has stated that he has received various reports from Intelligence Bureau and also certain reports from the State Government of Kerala and these reports were either in writing or in the form of cassettes or tapes. He clarified that the reports which were received from the Intelligence Bureau and State Administration were in English whereas the cassettes were in Malayalam language. The English translation of cassettes was also provided by the Intelligence Bureau. All this material was available with him on 8th December, 1992 prior to the issue of the Notification. The cassettes were in Malayalam language. However, with the help of the officers knowing Malayalam language, the cassettes were played upon and it was ascertained by him that the text provided in English translation of the Malayalam speech was correct. He has heard the playing of the cassettes in his office. It took about 5½ hours hear the cassettes. They received these cassettes from Intelligence Bureau and there was no reason to disbelieve that the cassettes which were stated to have been made out of the speeches of Mr. Madani and other persons were not genuine. He further stated that after the incident of 6th December, 1992, there was wide spread riots all over the country including the State of Kerala which led to communal disharmony. In fact the speeches made by Mr. Madani earlier reveal that he has been raising communal hatred between Hindus and Muslims that in case anything happened in regard to the demolition of the disputed structure at Ram Janam Bhoomi Babri Masjid, he will take strong action and for that purpose he has also prepared Volunteered Forces of Islamic Sevak Sangh. He also gave a call for Jihad.

Mr. Padhi in his cross examination has stated that the reports Annexures 'B' to 'L' annexed to the affidavit and marked Exts. 26 to 36 has been sent by an officer of the rank of D. I. G. of Intelligence Bureau posted at Kerala. These reports received from Intelligence Bureau officers also stand corroborated from the reports received from the police of Kerala Administration. He further stated that

although the speeches made by Mr. Madani are in Malayalam language but he has received the English translation of these speeches alongwith the original speeches in Malayalam, wherever possible. He has checked up with Malayalam knowing officers to find out whether the speeches received in English are true translation of Malayalam language in which the said speeches were made by Mr. Madani. One of his P. As. knew Malayalam who helped him in this regard.

He further stated that he had not gone on the site but they have a system of cross examination whether or not the reports were correct. Furthermore, he also checked up these reports with the reports which he received from the local administration as a matter of corroboration and in routine official business. The reports received are correct. He stated that he was aware that eight cases have been registered against the Chairman of I. S. S. Mr. Madani under Sections 153A and 153B of the Indian Penal Code, out of which only three cases have been referred to in the Resumé but the remaining five cases could not be mentioned therein as the material at the relevant time was not readily available with them, which was received by them subsequently. He further stated that he received regarding communal tension, riots and violence in Kerala on December 7 and 8, 1992 though it was of a lesser magnitude. From November 26, 1992, onwards they had taken precautions in Kerala by posting additional para military forces and keeping military as stand-by in anticipation of the communal trouble. He found from the records that there were 16 reports from Kerala on December 7 and 8, 1992 revealing communal tension. Although he did not know the actual names of the persons of the I. S. S. who participated in riots, violence and created communal tension, however, the names were available with the local police administration of Kerala where F. I. Rs. had been registered. The places where riots, communal tension and violence took place on 7-12-1992 were :—

1. Trichur.
2. P. S. Sankaran Kulam, Malappuram
3. Kasargode.
4. Alleppey Town.
5. Kottayam Town.
6. P. S. Kottayam Distt. Quilon.
7. P. S. Nedumangad, Trivandrum.
8. P. S. Podgajjakam|akkeoost.
9. Kodungallur, Trichur.
10. Thikkanniyath-Padi, Trichur.

It has not been shown that these witnesses are biased or inimical to the I. S. S. in any way and admittedly they are official witnesses. Therefore, there is no reason why the testimony of these witnesses should not be accepted.

From the above material it is obvious that Mr. Madani and ISS members have been aggravating tension between Hindus and Muslims and various other communities and thereby have been committing offence under Sections 153A and 153B of the IPC

which was also a threat to the sovereignty and integrity of the country and such acts easily come within the purview of Unlawful Activities (Prevention) Act but in spite of that action was not taken by the Government of India. It is only after 6-12-1992 i.e. after the demolition of Ram Janambhoomi-Babri Masjid structure there were communal riots in various parts of the country and there was intensive damage to the property. Many lives were also lost. In that situation after 6-12-1992 if this organisation had been allowed to function it would have meant aggravation of already surcharged communal atmosphere. Having kept in view all the facts and circumstances, the impugned notification was issued.

The evidence of Mr. Srivastava finds full support from the other affidavit-evidence of Shri H. Sasidharan, Shri Janardhanan Nair, Shri K. Prabhakaran Nair, Shri T. Raghunathan and Mr. K. P. Assu, officers/officials of the State of Kerala, which would be discussed later while dealing with the specific grounds in the Notification.

Mr. Malhotra, learned counsel for the Union of India during the course of arguments has drawn my attention to all such evidence.

It is apparent from the evidence discussed above that Mr. Abdul Nazar Madani, Chairman of the Islamic Sewak Sangh had been giving inflammatory speeches with a view to promoting, on grounds of religion, disharmony or feelings of enmity, hatred or ill-will between different communities. One of the speeches of Mr. Madani delivered in public meeting at Poonthura, District Trivandrum on 30-6-1992, as referred to in the Notification, may also be noted. This meeting at Poonthura was annexed along with Annexure-K to the resume and has been exhibited as P. 35. Mr. Madani spoke about the famous Bilal, who sacrificed his life for the upliftment of the Negros in South Africa. He exhorted the Muslims to follow the path shown by Bilal. According to him, the I. S. S. has grown as a strong movement in the world. Person like Abdul Rahiman Sahib has joined the I. S. S. without expecting any reward from the I. S. S. They have come to the I. S. S. to liberate the oppressed Muslim community in Kerala. During the past 1½ years, 25,000 muslims were murdered in Kashmir by the Indian Army. 6,000 Muslim girls were raped by the police and Army. Small children were boynotted and with their blood the beasts inside the kakki had drawn the map of India. He stated that he was asking the Indian Government whether it was necessary to keep the Kashmir with the Indian Union.

This fact was incorporated in para-13 of the resume which was given to the I. S. S. In reply to para-13, Mr. Abdul Nazar Madani, Chairman of the I. S. S. has only stated that it does not correctly refer to the speech made at Poonthura on 30-6-1992. However, he has not denied the speech having been made. It has also not been shown by Mr. Madani as to what extent and effect the version given in Annexure-K is wrong and incorrect. Further the Government itself refers to the contents of his speech as an extract of his speech and does not claim that it is the full and complete version of his speech. In these circumstances, the testimony of Mr. Madani in the form of an affidavit and in cross examination that he did not deliver

a similar speech, cannot be accepted. Therefore, the contents of Annexure-K to the Resume, Ex. P. 35 clearly demonstrate that Mr. Madani had delivered very highly provocative and inflammatory speech that about 25,000 Muslims were murdered in Kashmir during the last one and half year, 6,000 girls were raped by the police and army and small children were boynotted in cold blood and that he was asking the Indian Government whether it was necessary to keep Kashmir with the Indian Union.

Mr. Shakeel Ahmed, learned counsel for the ISS argued that in case the version in Annexure-K was considered as correct even then such speech only mentioned that during the past one and half year 25,000 muslims were murdered in Kashmir by the Indian Army and 6,000 muslims women were raped by the police and Army, whereas it did not state that muslims women were being raped by Hindus with the support of the authorities, as given in the Notification. Therefore, no reliance can be placed on this document.

No doubt there is slight discrepancy in the version given in Ex. P. 35 and the Notification but in substance it does not make much material difference. In Notification the substance of Annexure-K (Ex. P. 35) has been given and not every word used in this document and perusal of the whole of the document will show that Mr. Madani while referring to rape of girls by police and army, he is in fact referring to rape by Hindus as his whole speech has been directed against Hindus and the Hindu leaders. The fact remains that this speech Annexure-K, which in fact was delivered by Mr. Madani, if read as a whole, it clearly establishes the ground taken in the Notification by the Government of India. This speech was obviously delivered by Mr. Madani at Poonthura on 30-6-1992 with a view to promoting on grounds of religion disharmony or feelings of enmity, hatred or ill-will between different communities particularly against Hindus.

Mr. Madani, not only, has delivered provocative speeches, aforementioned, but has also his undated speeches recorded for circulation to the public which are available in the market for sale. In the affidavit Shri G. Janardana Nair, has stated that he is residing at H. No. II/498, Thachayil Mukku, Karunagappally, Kollam District Kerala State, and is the Deputy Superintendent of Police, Karunagappally, Sub Division Kollam District Kerala State from 14-5-1992. He has further stated that Mr. Madani who had met him several times for permission for meeting under Section 19 of the Kerala Police Act, 1960, and he was under police remand in his custody for 3 days and he had interrogated him for about 3 days from 2-3-1993 to 4-3-1993 in connection with FIR 221/92 of Sasthamcotta Police Station under Section 3 read with Section 25 of the Arms Act, Section 3 of the Explosive Substances Act and Sections 10 and 13 of Unlawful Activities (Prevention) Act, 1967. He is familiar and conversant with the voice of Mr. Madani and has met him on several occasions as he resides within his jurisdiction and has also proved the speeches transcribed as Annexures M & N to the Resume as the true English translation of the Malayalam transcript. A true copy of the cassette of the aforesaid two speeches and their Malayalam transcripts are annexed as Exhibits 1, 2, 3 and 4 respectively.

tively. Their English translations are exhibits 5 and 6 respectively. In cross examination, when he appeared as G.W. 7, he further stated that if the true voice of Mr. Madani or anybody else is recorded in a cassette and played upon, he is in a position to identify those voices although there may be marginal difference between the two. He further stated that the speeches delivered by Madani have been recorded in the cassettes.

These recorded speeches have been admittedly available in the market for public circulation and these speeches clearly show that Muslim cannot live as a Muslim in this country and Muslim brothers should be prepared to get organised as also question the right of the people to hoist national flag in Kashmir. Such ground taken in the Notification, therefore, also stands fully established.

Mr. Shafeel Ahmed argued that these speeches have not been delivered by Mr. Madani and that Mr. Madani has always been saying that Kashmir is an integral part of India. He further stated that these recorded cassettes had not been proved in accordance with the law laid down by the Supreme Court in *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehri and others*, (1975) Supp. S. C. R. 281, wherein it had been held that tape records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions : —

- (a) the voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who knew it.
- (b) accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.
- (c) the subject matter recorded had to be shown to be relevant according to rules of relevance found in the Evidence Act.

It has already been proved by the affidavit of Mr. G. Janaradan Nair that these recorded cassettes are of Mr. Madani and he knew Mr. Madani and was conversant with his voice and could identify his voice. In his cross examination, no question has been put to him that these speeches are not that of Mr. Madani and, therefore, it must be held that these speeches were that of Mr. Madani. Mr. Madani is not present in Court today. However, in order to satisfy myself that such cassettes have been recorded from the speech of Mr. Madani, I got these cassettes played upon in the court as I had also heard the voice of Mr. Madani while he was cross examined in the Court at Cochin. I have heard the voice of Mr. Madani in the tape recorded in Ex. P. 1 and Ex. P. 2 and I am of the view that this is the same voice Mr. Madani.

On the basis of certain speeches to be mentioned hereinafter, three criminal cases have been registered against Mr. Abdul Nazar Madani under Sections 153-A and 153-B of the Indian Penal Code, namely, as also referred to in the Notification :—

- (i) Karunagapally P. S. (District Kollam) case No. 109/92 dated 20-3-1992 under Section 153-A;
- (ii) Kundra PS (District Kollam) case No. 117/92 dated 28-3-1992 under Section 153-A; and
- (iii) Kasaba PS (District Calicut) case No. 103/92 dated 21-5-1992 under Section 153-B.

Shri Sasidharan, who is a Shorthand Reporter of Special Branch CID, Kollam in his affidavit dated 29-2-1993 has stated that he knows fact of crime 117/92 under Section 151 A of IPC of Kundara Police Station and Crime 109/92 under Section 153-A of IPC of Karunagapally Police Station. He further stated that on 27-12-1991 he was on duty at Chandanathope in Kundara Police Station limits in Kollam District, Kerala and had noted in shorthand the speeches made by Mr. Abdul Nazar Madani, Chairman of High Power Committee of ISS, Keralapuram Biju, Chelakulam Abdul Moulavi and Elamkulam Shamsudeen workers of ISS and Ext. P-9 is the copy of Malayalam transcript of the said speeches, Ext. P-9 is in his hand and is the correct transcript of the speech recorded by him. He further stated that he had also noted in shorthand the speeches made by Mr. Madani on 22-11-1991 at 7.00 P.M at Vavakkavu Jn. and Ext. P-16 is the copy of Malayalam transcript of the said speeches and is in his hand.

Mr. K. Prabhakaran Nair, who is Circle Inspector of Police, Kollam East in his affidavit evidence has stated that Mr. Nazar Madani, Mr. Keralapuram Biju, Mr. Chelakulam Abdul Moulavi and Elamkulam Shamsudeen, members of ISS, delivered speeches which were written by a shorthand reporter Shri H. Sasidharan of Kerala Police and on the basis of the transcript of the said speech was sent to him and he registered a case vide FIR No. 117/92 of Kundara Police Station under Section 153A IPC against them. Copies of the transcripts of the relevant speeches is Ext. P-9 copy of the FIR is Ext. P-10 copy of the charge is Ext. P 11. English translations of Ext. P-9 is Ext. P-12, of Ext. P-10 is Ext. P-13 and of Ext. P-11 is Ext. P-14.

Shri K. P. Asua, who is Circle Inspector Police, Kasaba Calicut city Kerala in his affidavit has stated that on 2-5-1992 at 6.30 P.M at Muthalakulam in Calicut city in Kerala State while addressing about 3,000 persons Shri Abdul Nazar Madani gave a highly provocative speech which was tape recorded and on the basis of which a case vide FIR No. 103/92 of Kasaba P. S. Under Section 153, 153-A and 153-B I. P. C. was registered against him. The FIR is marked as Ex. P. 19 and its English translation is marked as Ex. P. 20.

Shri T. Raghunathan who is Sub-Inspector of Police, Special Branch CID, Kollam in his affidavit has stated that on 22-11-1991 at 7 P. M. at Vavakkavu junction near Karunagapally in Kollam District of Kerala State, while addressing about 3,000 persons Abdul Nazar Madani, Chairman of High Power Committee of ISS and Abdul Gafar Kousari and Razak Moulavi who were members of the ISS gave speeches. These speeches were written by a short hand reporter

Shri. H. Sasidharan of Kerala Police. He further stated that the transcript was to him and he registered a case vide FIR No. 109/92 of Karunagapally Police Station under Section 153-A I.P.C. against Sri Abdul Nazar Madani, A. H. Abdul Gafar Kousari and Abdul Razak Maulavi and that the original FIR was written under his supervision and he signed the FIR and registered the case. He further stated that the persons mentioned above were put to trial in the court of Judicial Magistrate 1st Class, Karunagapally on 27-6-1992 and they are facing trial. The copies of the Malayalam transcripts of the relevant speeches is Ex. P. 15, Copy of FIR is Ex. P. 16 and copy of charge is Ex. P. 16 Their English translation are marked as Ex. P. 18.

FIR No. 109/92 under Section 153A IPC was registered on the basis of the speech made by Mr. Madani on 22-11-1991 at Vavvakkavu under the auspices of Vavvakkavu unit of ISS, Mr. Madani made a speech with a view to promoting and intending to promote disharmony and prejudice between Hindus and Muslims. He claimed that Babbar was not a foreigner but had come from Afghanistan, the birthplace of Gandhi. He stated that unrelenting agitation would be started by the ISS against the people who had taken over Babri Masjid. He stated that one muslim religious scholar who went to the Medical College Hospital to see his sister, was beaten by police. By his speech, he intended to arouse the feeling of the members of Muslim community against the Hindus and thereby promoted and attempted to promote prejudice, hatred, ill-will and disharmony between Muslims on the one hand and other religious on the other.

Case No. 117/92 under Section 153A was registered at Kundara PS (Distt. Kollam) on the basis of the meeting held on 27-12-1991 under the auspices of ISS at Chandanathoppe Junction where Mr. Madani incited the Muslims for communal riots against Hindus, promoting enmity and hatred between the two classes. He exhorted the group of about 1500 people that life and property of Indian Muslims was in danger and he alleged that some people were insisting on maligning muslim leaders. He spoke about killing of Ali Musaliar at Kottor, Alavi Moulavi at Thiruvananthapuram and killing of Siraj at Palghat. He alleged that fascists were bent upon killing Muslims. He exhorted the members to rise against the alleged Muslim harassment under ISS flag. Another member Chelakulam Abdul Moulvi, who was a member of ISS told the gathering that one set of people were saying that Babar's descendants cannot live in this country and Muslims were being beaten and ISS is an organisation protecting the Muslim.

Case No. 103/92 under Section 153B was registered at Kasba PS (Distt. Calicut) on the basis of the speech delivered by Mr. Madani on 2-5-1992 at Kasba. In his speech he accused the authorities that if Uma Bharti, K. G. Marar, Lal Kishan Advani spoke, it was said to be a patriotic speech but if Mr. Madani spoke, his speech was stopped. He alleged that mike was allowed to Mr. Ashok Singhal to speak that 3003 mosques would be demolished. He stated that even if all authorities opposed, they decided to go ahead with their activity and he was warning that no power on earth could retreat them. He asserted

that they were assembling not with the taste of breath of authority, not for the mercedes cars but for protection of Allah's deen, for the liberation of Muslim religion. He asserted that they were not led by passion for power nor for the interest of better living conditions. He alleged that Muslim community in India was cruelly assailed, tortured and rights were being denied to them. Their dead bodies were piled up like Himalaya and the blood of Muslim community was flowing like the Ganges. He asserted that Islamic Sevak Sangh was formed to put a stop to such happenings. He stated that he was the representative of a revolutionary organisation (ISS). He stated that cruelty had started from Kashmir. In the heart of Kashmir, Muslim brothers were being cruelly assaulted. He alleged that in one and half years more than 23,000 muslims were killed by people in khaki dress. He used highly inflammatory speech which was intended to arouse hatred, prejudice, enmity between Hindus and Muslims and was highly prejudicial to public tranquility.

Mr. Shakeel Ahmed, learned counsel for the I.S.S. submitted that all these aforementioned speeches of Mr. Madani are not the true version of his speeches. In fact he has not stated what has been alleged against him. All these speeches in fact have been planted on him with a view to registering cases against him and declaring the ISS as unlawful organisation. He further submitted that FIRs were lodged after few months which was fatal to the prosecution cases and made the whole story as unreliable. These cases, therefore, should not be relied upon by the Government for declaring the organisation as unlawful.

In this context, it is suffice to say that at this stage on the basis of speeches aforementioned, delivered by Mr. Madani the cases referred in the Notification have been registered against him and others and these cases are pending. Whether these cases are false or genuine or whether there is any substance in such cases that has ultimately to be decided by the courts where such cases are pending. It would not be appropriate at this stage and particularly in these proceedings to judge the merits of the cases. At this juncture, it can only be noted that such cases have been registered which reveal that Mr. Madani by having delivered speeches has been encouraging and aiding its followers to undertake unlawful activities within the meaning of Unlawful Activities (Prevention) Act, 1967 and thus has promoted hatred and enmity between two religions, Hindus and Muslims. Such argument has no substance.

It was next contended by learned counsel for the I.S.S. that Mr. Madani had never made any provoking or inflammatory speech, as alleged against him nor any of his speeches had been recorded in cassette. All such allegations have been manufactured and planted and false cases have been registered by the Union of India with a view to declare the I.S.S. as unlawful organisation. Mr. Madani is a great nationalist and has always preached Islamic principles which stands for universal brotherhood and has always stood for national integrity and sovereignty of the country including Kashmir.

Mr. Madani has filed an affidavit to this effect and also has been cross examined as R. W. 4. It is difficult to accept the blanket denial of the allegations made by Mr. Madani and version put up by him in his affidavit and in the cross examination in the race of voluminous evidence produced by the Union of India to the contrary, as already discussed above.

The three criminal cases, as referred to in the Notification, which have been registered against Mr. Madani and discussed above are based on the report submitted by Mr. Sasidharan, who is a Malayalam short hand reporter of Special Branch, C.I.D. Kollam and who has sworn an affidavit on 9-2-1983. He has also been cross examined. In his cross examination, an attempt was made by learned counsel for the I.S.S. that in fact Mr. Sasidharan did not know short hand in Malayalam and cannot, therefore, record the speech. In order to cut short the controversy, I asked the learned counsel appearing for the I.S.S. to give him dictation in Malayalam and consequently dictation was given. It was not disputed by learned counsel for I.S.S. that the dictation in Malayalam was correctly taken by the witness. All the three cases were based on the full text of the speeches given by Mr. Madani on various occasions, as already discussed above. One of the speeches in fact was delivered by Mr. Madani at Kasba was recorded in cassette. Mr. Sasidharan has recorded such speech in short hand in his official capacity, as he has been working in C.I.D. Special Branch, Kerala Police. He knew Malayalam short hand. Since these cases have been registered on the basis of the reports recorded by Mr. Sasidharan in short hand and submitted to his senior officers, to whom he normally submits such reports in the normal course of the business in the official capacity, the authenticity of such reports cannot be doubted, more particularly when such reports have been taken in Malayalam short hand by Mr. Sasidharan when the question of banning this organisation was not under consideration by the Government of India. Furthermore, other documents annexed to the Resume and duly exhibited are the extracts of the various speeches of Mr. Madani submitted to Intelligence Bureau of the Government of India from various sources in the normal course of official business and, therefore, their genuineness can also not be doubted.

In cross examination, attention of Mr. Madani was drawn by learned counsel for the Union of India to his speech Ex. P. O and he stated that no doubt it reflected the substance of the speech but did not reflect the exact text of the speech. Further, when the attention of Mr. Madani was drawn to his other speech Ex. P. 20, he stated that some of the ideas contained in the said speech were his but the words were not his. However, certain parts of the speech contained on certain pages have been completely denied. Not only that, he has denied the voice of his speech recorded in cassette Ex. P. 21 at Kasba. The voice of Mr. Madani was also recorded in a cassette in Court, which is Ex. C.W. 111. The speech recorded in Ex. P. 21 was played in the Court along with the voice recorded in Ex. C.W. 111 and the voice of Mr. Madani was compared. I was satisfied that the voice recorded in Ex. P. 21, on the basis of which case No. 103/92 at P. S. Kasba was

registered, is the voice of Mr. Madani, it appears that Mr. Madani sometimes denied all the allegations in entirety and sometimes admitted part of the allegations, and again denied even the voice recorded in cassette. This clearly shows that no credibility can be attached to the testimony of such witness. No doubt I.S.S. has produced other witnesses in support Mr. Madani and filed their affidavits. One of such witness is R. W. 1 Wilfred Sebastian. The testimony of this witness does not inspire confidence as he is an interested witness and is actively associated with Mr. Madani. Mr. Madani in his cross examination has admitted that he has formed the People's Democratic Party on 14-4-1993 and Mr. Wilfred Sebastian (R.W. 1) is its Vice Chairman. Mr. Wilfred Sebastian himself has admitted that he is the Vice Chairman of this newly formed party and Mr. Madani is the Chairman.

Another witness Mr. C. Ibrahimkutty (R.W. 2) has also tried to support Mr. Madani generally. But this witness also being interested witness and actively associated with Mr. Madani cannot inspire confidence. Although this witness on a suggestion given by learned counsel for the Union of India in cross examination has denied that he is the Secretary of the People's Democratic Party, at its Local Branch at Karunagapally, but Mr. Madani himself in his cross examination has admitted that R.W. 2 Mr. C. M. Ibrahimkutty is one of the General Secretaries of the People's Democratic Party, of which he is the Chairman and that he is known to him since his childhood. Similarly, no weight can be attached to the testimony of R.W. 3 Mr. J. P. Celestan as this witness is also an interested witness. Admittedly, this witness is a retired school teacher and knows the father of Mr. Madani since 1978 as a member of Teachers' Organisation. Moreover, it has also come in the cross examination of Mr. J. P. Celestan (R.W. 3) that he is the Vice Chairman of Latin Service Society whereas Mr. Wilfred Sebastian (R. W. 1) is the Chairman of the said society. As already discussed and stated above, Mr. Wilfred Sebastian (R.W. 1) is the Vice Chairman of People's Democratic society of which Mr. Madani is the Chairman. In other words, all these witness are associated with each other in one capacity or the other. Although R.W. 1 to R.W. 3 have attempted to support Mr. Madani generally but, as already stated, their testimony does not inspire confidence and, therefore, has to be disbelieved. No much reliance can be placed on their testimony. Other affidavits of certain persons filed on behalf of I.S.S. cannot be taken into consideration as they have chosen not to come for cross examination. Therefore, this argument must fail.

The next submission made by the I.S.S. is the sources from which information has come to the Intelligence Bureau have not been disclosed with the result that the defence of I.S.S.s. is prejudiced and thereby they have unable to represent their case effectively. This submission of learned counsel also deserves to be rejected, as no specific information has been sought to be asked about the sources by the I.S.S. This argument is too vague to be taken note of. Furthermore, the Union of India has claimed privilege for disclosing the information received by them from various sources as it is against the security of the public.

The last argument raised by I.S.S. was that I.S.S. stood dissolved on 10-12-1992 after the impugned Notification. Mr. Madani in his cross examination necessity of confirming the declaration made in the Notification. Mr. Madani in his cross examination has also stated that the I.S.S. stands dissolved after the issue of the Notification. However, they would like the ban to be discontinued because after imposing of the ban certain houses including his house, Arabic Colleges, Yatim Khanas, Orphanage Houses have been sealed by the police which could be reopened after the ban is discontinued. Otherwise, they have already dissolved the I.S.S. and they do not intend to continue it in one form or their other.

From this statement of Mr. Madani, it is apparent that they want the ban to be lifted with ulterior purpose of getting their house, Arabic Colleges, Yatim Khanas, Orphanage Houses which have been sealed by the police after the organisation was declared unlawful. Although it has been stated by Mr. Madani that they do not intend to continue I.S.S. in one form or other, but this statement also cannot be accepted as already discussed above, his testimony does not inspire any confidence for various reasons. Although I.S.S. has been dissolved by Mr. Madani, but he has

floated another party, namely, People's Democratic Party, of which he is the Chairman.

The above facts brought out by the Central Government corroborated and supported by the State of Kerala clearly establish the grounds specified in the Notification dated 10-12-1992, on the basis of which such Notification was issued for declaring I.S.S. as unlawful. Further, such grounds for making such declaration are perfectly relevant and justified for declaring I.S.S. as unlawful association.

In the light of what has been discussed above, I am of the firm opinion that Central Government has shown sufficient cause for declaring I.S.S. as unlawful association under the Act and the same was necessitated in the public interest. The declaration made by the Central Government vide Notification dated 10-12-1992 is, therefore, hereby confirmed.
June 3, 1993.

Sd/-

(P. N. NAG)
Tribunal
[No. II/12034/74/93-IS (DV)]
T. N. SRIVASTAVA, Jt. Secy.

